

DATE : November 3, 1997

TO : Albert Wong,  
Examiner; Art Unit 2617

VIA : Jeff Hofsass  
SPE, AU 2617

FROM : Joe Dixon  
SPRE E-Cluster

RE : REISSUE APPLICATION No. 08/807,120

The official declaration filed on February 19, 1997 has been reviewed and a number of deficiencies still remain in the declaration. Until all these deficiencies are corrected the application can not be issued.

Please act on this case as soon as possible. It has been available for action since Sept. 29, 1997.

#### REISSUE DECLARATION

The declaration fails to establish for the file record, that the errors sought to be corrected are without deceptive intent within the meaning of 35 U.S.C. § 251.

1. The declaration fails to specifically point out the errors and **how they arose** or occurred, i.e., **specifically when** and the manner in which they occurred. 37 CFR 1.175(a)(5) [MPEP 1414.03].

The declaration states that the inventor recognized the error or the attorney recognized the error, but does not specifically identify who made the error. Both have been identified as not appreciating the scope of the claim. The inventor appears to put blame on the patent attorney, but no declaration accepting the responsibility of making the error has been filed by the attorney. **Who made the error?** When were the errors made (specifically)?

If the representative failed to recognize the scope of coverage needed or possible then an oath or declaration from the attorney would be necessary which acknowledges the error(s).

2. When were the errors discovered and who discovered them? The declaration does not provide and specificity in this regard.

#### FORMAL REQUIREMENTS:

1. The certification under 37 CFR 3.73(b) is defective. A new Assent of Assignee for the reissue is required.
2. No request has been made under 37 CFR 1.174 to have the drawings transferred from the patented file to the reissue application. Inquire whether this is desired.
3. Offer to Surrender the patent is found in the Transmittal Letter filed with the application on Feb. 19, 1997.

#### CONCLUSION & SUGGESTIONS:

This application is not in condition for allowance.

It is suggested that a new non-final Office action be issued. The action should include at least the following items:

1. Objection to the reissue declaration under 37 CFR § 1.175 as being defective for the reasons above.
2. Reject all claims under 35 U.S.C. § 251 as being based on a defective reissue declaration.